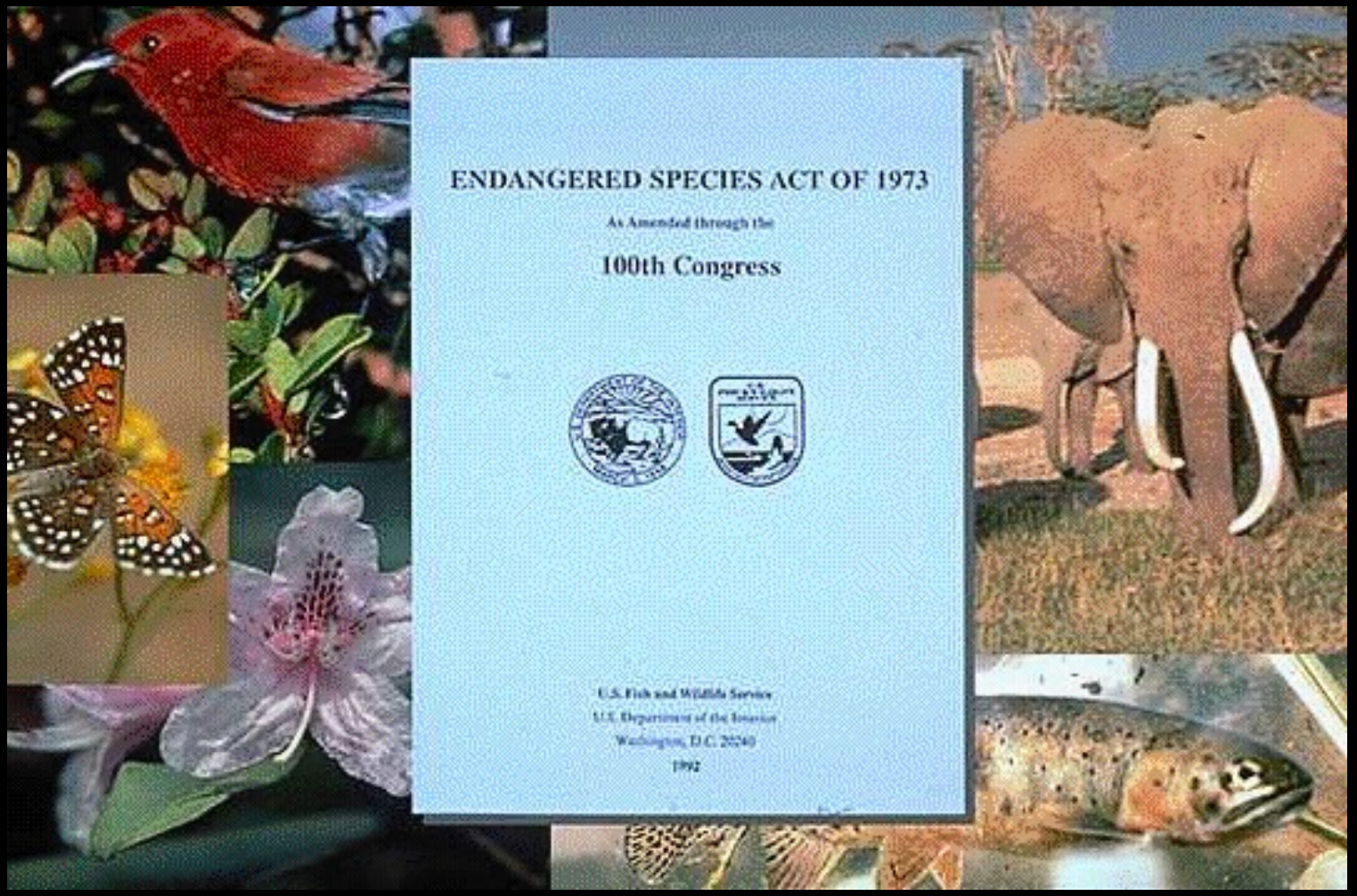
Environmental Law Division

"A Socia Hoc"

ENDANGERED SPECIES ACT OF 1973

Lt Col Andrea Andersen

HQ ACC/JAV


ENDANGERED SPECIES ACT OF 1973
As Amended through the
100th Congress
U.S. Fish and Wildlife Service
U.S. Department of the Interior
Washington, D.C. 20240
1992

Endangered Species Act (ESA)

- Comprehensive program designed to protect species and their ecosystems
- Section 9 prohibits “taking” of listed species
- Section 7 applies to federal agencies
  - Must conserve listed species
  - Limits actions that may jeopardize species or result in destruction/adverse modification of critical habitat

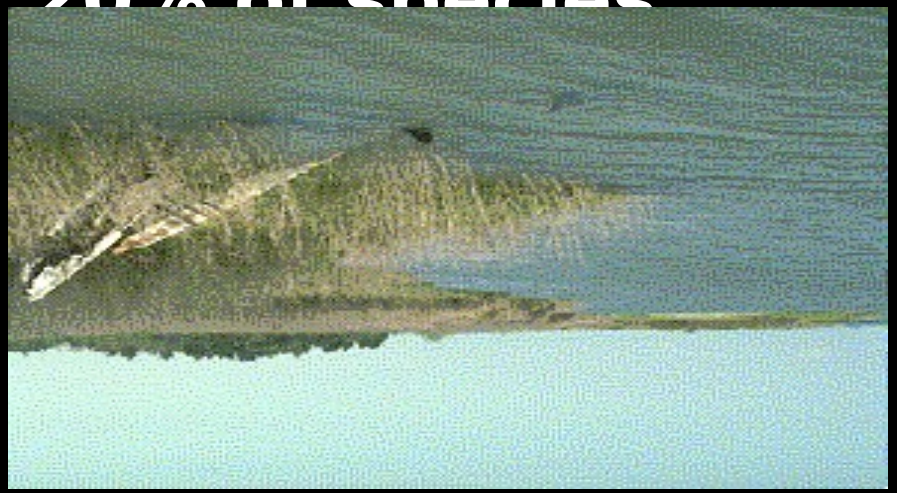
Designation of Critical Habitat

- Critical Habitat
  - within geographic area occupied by species with features essential to conservation and which may require special management considerations or protection
  - outside geographic area occupied by species but determined essential for conservation
  - economic impact may be considered

Designation of Critical Habitat

- Designation of critical habitat should be concurrent with listing of species

- Reality - critical habitat designated for less than 20% of species



U.S. Fish & Wildlife Service (USFWS) Proposed Rule on Critical Habitat

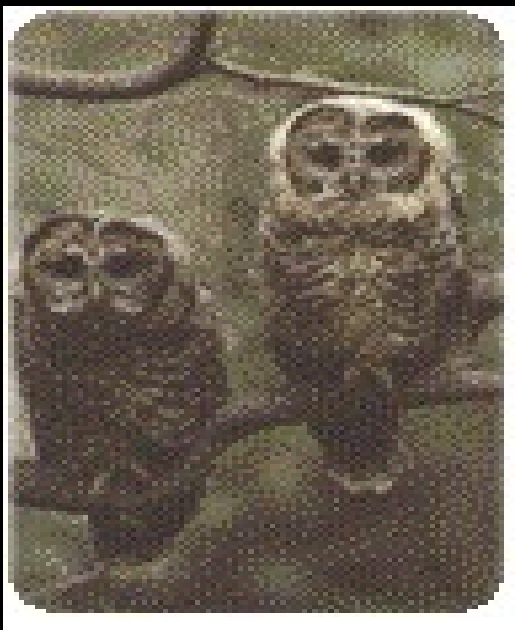
- 14 Jun 99, Notice of Intent to Develop New Regs/Policy on Habitat for T/E Species
  - Inundated with lawsuits for failure to designate critical habitat
  - Sought comments on benefi
    of critical habitat designatio

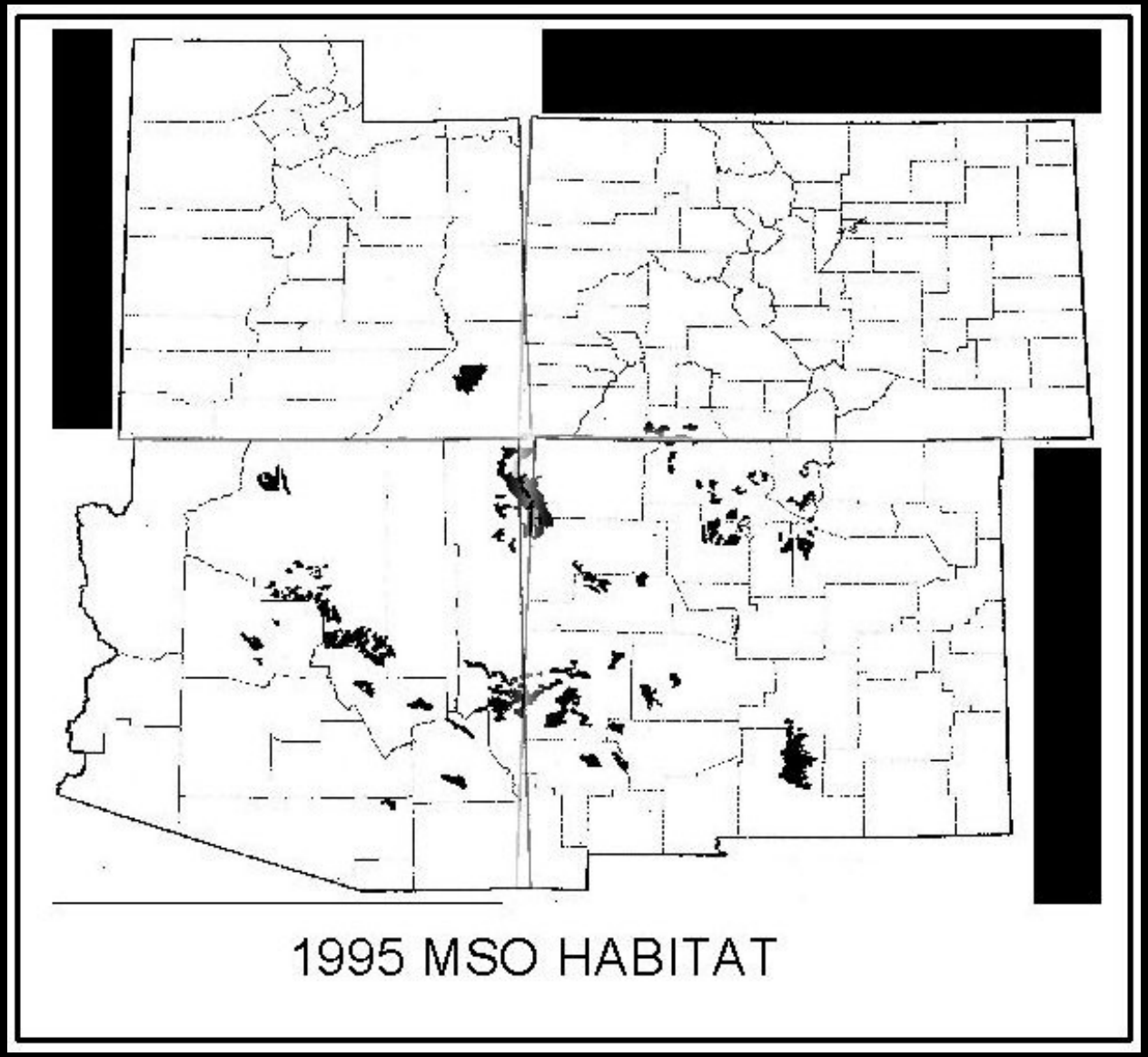
U.S. Fish & Wildlife Service (USFWS) Proposed Rule on Critical Habitat

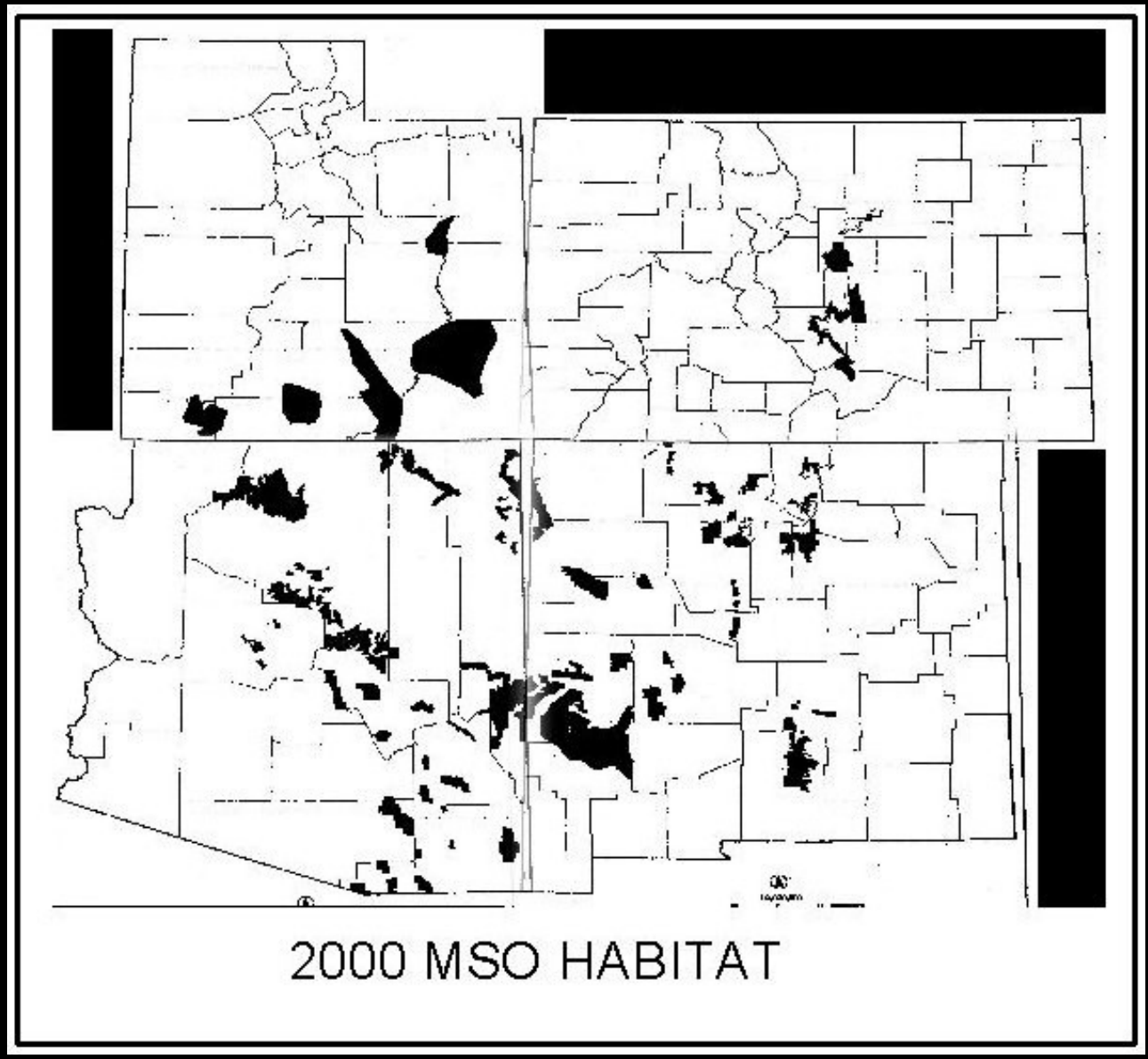
- AF provided comments
  - Focused on Integrated Natural Resource Management Plans (INRMPs) required by Sikes Act
  - Argument: if contained in INRMP, then not in need of special management consideration
- USFWS draft policy on Special Management or Protection

USFWS Proposed Rule on Mexican Spotted Owl (MSO) Critical Habitat

- 21 Jul 00, proposed rule designating critical habitat
  - Proposes to designate as critical habitat areas not presently occupied
  - Bigger area will impact more routes
  - Destruction/adverse mod = jeopardy not “take”
  - Carved out Tribal lands with MSO Management Plans




1995 MSO HABITAT


2000 MSO HABITAT

USFWS Proposed Rule on Mexican Spotted Owl Critical Habitat

- Comment period closed 19 Sep 00

- ACC comments
  - Maintain no impact due to flying o
  - If avoidance distances set, should be less for military aircraft than terrestrial disturbances
  - Focus on impacts to flying ops if 1,600 ft AGL avoidance applied to unoccupied areas